

Belinda Hernandez

DC-18-10642
NO. _____JAMES L. MCPHAIL
Plaintiff,

V.

MILAN LOGISTICS, INC.
Defendant.§ IN THE DISTRICT COURT
§
§
§ _____ JUDICIAL DISTRICT
§
§
§ OF DALLAS COUNTY, TEXAS**PLAINTIFF'S ORIGINAL PETITION & REQUEST FOR DISCLOSURE****TO THE HONORABLE JUDGE OF SAID COURT:**

NOW COMES James L. McPhail, hereinafter called Plaintiff, complaining of and about Milan Logistics, Inc., hereinafter called Defendant, and for cause of action shows unto the Court the following:

DISCOVERY CONTROL PLAN LEVEL

1. Plaintiff intends that discovery be conducted under Discovery Level 2.

PARTIES AND SERVICE

2. Plaintiff, James L. McPhail, is an Individual whose address is 342 White City Road, Hornbeck, Louisiana 71439.

3. James L. McPhail has not been issued a driver's license. The last three numbers of James L. McPhail's social security number are 677.

4. Defendant Milan Logistics, Inc., a Corporation based in Texas, is organized under the laws of the State of Texas, and service of process on the Defendant may be effected pursuant to sections 5.201 and 5.255 of the Texas Business Organizations Code, by serving the registered agent of the corporation, Ivana Bijelic, at 227 Edgewood Drive, Coppell, Texas 75019, at the mailing address for its registered office. Service of said Defendant as described above can be

effected by certified mail, return receipt requested.

JURISDICTION AND VENUE

5. The subject matter in controversy is within the jurisdictional limits of this court.

6. Plaintiff seeks:

a. monetary relief over \$200,000 but not more than \$1,000,000.

7. This court has jurisdiction over the parties because Defendant is a Texas resident and resides in Dallas, County.

8. Venue in Dallas County is proper in this cause under Section 15.002(a)(1)(3) of the Texas Civil Practice and Remedies Code because all or a substantial part of the events or omissions giving rise to the claim occurred there and because the Dallas County is the location for the principal office of Milan Logistics, Inc.

FACTS

9. On or about September 21, 2017, Plaintiff was working as a truck driver for Milan Logistics out of Defendant's facility located at 5300 West Airport Freeway, Irving, Texas 75063. Defendant Milan Logistics, Inc. assigned Plaintiff to travel to Georgia to deliver product. As part of his job duties, McPhail was required to store his manifest paperwork in the back of the actual trailer he was transporting. On the date of injury, Plaintiff was climbing into the back of his assigned trailer to store his manifest when he slipped and fell. Plaintiff sustained severe injuries to his left foot and ankle. After his on the job injury, McPhail returned to Dallas County where he and Milan Logistics agreed that McPhail would receive the sum of \$1009 per week until he was able to return to work. The purpose of this agreement was to compensate McPhail for part of his lost wages. Despite this fact, Milan Logistics breached its agreement with

McPhail and has refused to pay McPhail as it had agreed. As a result of his fall, Plaintiff James McPhail, suffered serious bodily injuries, which necessitated past medical care, and, which will in all probability, require medical treatment in the future. In addition, he has suffered past lost wages due to his injury and, in all probability, a loss of earning capacity in the future.

10. At all times relevant to this lawsuit, Defendant Milan Logistics, Inc., was a non-subscriber to a policy of workers' compensation benefits under the Texas Workers' Compensation Act. Accordingly, Plaintiff's employer is not entitled to the common law defenses of contributory negligence, assumption of risk, or negligence of a fellow employee pursuant to Texas Labor Code Section 406.033. **Furthermore, Plaintiff does not seek any benefit or remedy under any occupational injury plan created pursuant to the Employee Retirement Income Security Act of 1974.**

JAMES L. MCPHAIL'S CLAIM FOR NEGLIGENCE

11. Defendant Milan Logistics, Inc., as Plaintiff's employer, owed Plaintiff a non-delegable duty provide Plaintiff a safe place to work. Defendant Milan Logistics, Inc. was negligent for one or more the following reasons:

- Failing to have adequate policies and procedures in place to prevent injury to Plaintiff;
- Failing to have adequate safety policies and procedures concerning safe ingress and egress from tractor trailers;
- Failing to adequately supervise and/or train their employees concerning use and operation of company equipment at the Premises;
- Failing to properly maintain its equipment and/or Premises;
- Failing to provide proper safety equipment including step ladders, handrails, and/or

access ramps.

JAMES L. MCPHAIL'S CLAIM FOR BREACH OF CONTRACT

12. After his on the job injury, McPhail and Milan Logistics entered into a contract whereby Milan would pay McPhail the sum of \$1009.00 per week until McPhail was cleared to return to work. At all times relevant to this lawsuit, McPhail has been unable to return to work as a truck driver because of his on the job injury. Despite this fact, Milan Logistics has failed to pay McPhail the money it contractually agreed to pay. Due to this breach, McPhail has been unable to pay for his normal living expenses causing him severe economic hardship.

13. As a result of Milan's breach, McPhail has been forced to engage the services of the undesigned attorney to recovery money he is owed.

DAMAGES FOR PLAINTIFF, JAMES L. MCPHAIL

14. As a direct and proximate result of the occurrence made the basis of this lawsuit, Plaintiff, James L. McPhail, was caused to suffer a broken foot/ankle, and to incur the following damages:

- A. Reasonable medical care and expenses in the past. These expenses were incurred by Plaintiff, James L. McPhail for the necessary care and treatment of the injuries resulting from the accident complained of herein and such charges are reasonable and were usual and customary charges for such services in Dallas County, Texas;
- B. Reasonable and necessary medical care and expenses which will in all reasonable probability be incurred in the future;
- C. Physical pain and suffering in the past;
- D. Physical pain and suffering in the future;
- E. Physical impairment in the past;
- F. Physical impairment which, in all reasonable probability, will be suffered in the future;

- G. Loss of earnings in the past;
- H. Loss of earning capacity which will, in all probability, be incurred in the future;
- I. Disfigurement in the past;
- J. Disfigurement in the future;
- K. Mental anguish in the past; and
- L. Mental anguish in the future.
- M. Reasonable and necessary attorney's fees pursuant to Texas Civil Practices and Remedies Code Section 38.001 et. seq.

REQUEST FOR DISCLOSURE

15. Pursuant to Texas Rules of Civil Procedure 194.2 Plaintiffs file their Request for Disclosure to be answered not later than 50 days after the filing of Plaintiff's Original Petition.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff, James L. McPhail, respectfully prays that the Defendant be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiff against Defendant for damages in an amount within the jurisdictional limits of the Court; together with pre-judgment interest at the maximum rate allowed by law; post-judgment interest at the legal rate, costs of court; and such other and further relief to which the Plaintiff may be entitled at law or in equity.

Respectfully submitted,

By: */s/ Larry G. Trimble*

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